

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Attorney Docket No: **A8937**

Paul GILSON et al.

Application No.: **10/058,828**

Group Art Unit: **3731**

Confirmation No.: **3776**

Examiner: **Julian WOO**

Filed: **January 30, 2002**

For: **EMBOLIC PROTECTION DEVICE**

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705

MAIL STOP PATENT EXTENSION

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicants hereby respectfully request correction of the Patent Term Adjustment (PTA) listed in the Notice of Allowability mailed May 26, 2010, from 230 days to the 673 days currently listed in PAIR.

In accordance with 37 C.F.R. § 1.705(b) this Application for Patent Term Adjustment is being filed on the same day or prior to the issue fee being paid, and is therefore timely filed. The Director is authorized to charge Applicants' Deposit Account 19-4880 for the required fee as specified in 37 C.F.R. § 1.18(e) (\$200.00).

As required by §§ 1.705(b)(2), a Statement of the Facts is set forth below.

I. STATEMENT OF THE FACTS

There is a discrepancy between the amount of PTA reflected in the Notice of Allowability and the amount of PTA currently reflected in PAIR. The Office of Patent Legal Administration was unable to provide guidance as to why the discrepancy exists during a telephone conversation held with Kery Fries on August 23, 2010. To preserve their rights in the event that the present patent does not issue with the correct PTA, Applicants are filing the present Application for Patent Term Adjustment.

The difference between the incorrect 230 days listed on the Notice of Allowability and the correct 673 days currently listed in PAIR is the result of 443 days of USPTO delay under 37 C.F.R. § 1.703(c)(1) (resulting from the time that the present application was involved in Interference No. 105,583) not being included in the calculation of PTA appearing in the Notice of Allowability. Applicants' review of PAIR immediately following the issuance of the Notice of Allowability revealed that at that time, the 443-day delay did not appear in the PTA calculation. At some time since the issuance of the Notice of Allowability, however, the PTA calculation in PAIR was updated to reflect the 443-day delay.

Applicants attach herewith a copy of the PTA calculation as it currently appears in PAIR, which illustrates a correct calculation of the PTA accrued thus far in the present application.

A. *The correct patent term adjustment and the basis or bases under §1.702 for the adjustment*

Applicants respectfully submit that the correct PTA accrued thus far is 673 days. This results from 970 days of USPTO delay and 297 days of Applicant delay.

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B. Delay attributable to the USPTO (the relevant dates as specified in §§1.703(a) through (e) for which an adjustment is sought)

As illustrated in the attached printout of the PAIR calculation of PTA for the present application, the two independent delays attributable to the USPTO are:

- 527 days resulting from the issuance of the Restriction Requirement on September 7, 2004 (37 C.F.R. § 1.703(a)(1))
- 443 days resulting from the time that the present application spent in Interference No. 105,583 (37 C.F.R. § 1.703(c)(1))

Thus, the total delay attributable to the USPTO under 37 C.F.R. §§ 1.703(a)-(e) is 970 days.

C. Delay attributable to Applicants (any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination as set forth in § 1.704)

As illustrated in the attached printout of the PAIR calculation of PTA for the present application, the four independent delays attributable to Applicants are:

- 123 days resulting from the September 19, 2002 payment of filing fees (37 C.F.R. § 1.704 (b))
- 90 days resulting from the March 7, 2005 response to the September 7, 2004 Restriction Requirement (37 C.F.R. § 1.704 (b))
- 7 days resulting from the June 29, 2005 Response to the March 22, 2005 Office Action (37 C.F.R. § 1.704 (b))

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- 77 days resulting from the Supplemental Response filed September 14, 2005 (37 C.F.R. § 1.704 (c)(8))

Thus, the total delay attributable to the Applicants under 37 C.F.R. §§ 1.704 is 297 days.

D. Whether the application is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer

The present application is not subject to a Terminal Disclaimer.

E. The adjustment as specified in 37 C.F.R. § 1.703(f) to which Application No. 10/058,828 is entitled

In view of the above, Applicants respectfully submit that the correct PTA to date is 673 days.

II. CONCLUSION

In summary, Applicants respectfully submit that it is proper that the USPTO grant Applicants' Application for Patent Term Adjustment. Favorable consideration is respectfully requested.

Respectfully submitted,


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WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: August 25, 2010

 61,444
Travis B. Ribar
Registration No. 61,446



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<input type="checkbox"/> Selected New Case	<input type="checkbox"/> Application Data History	<input type="checkbox"/> Transaction Image File Wrapper	<input type="checkbox"/> Patent Term Adjustments	<input type="checkbox"/> Continuity Data	<input type="checkbox"/> Foreign Priority	<input type="checkbox"/> Published Documents/Attorney/Agent
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Patent Term Adjustment

Filing or 371(C) Date:	01-30-2002	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total Patent Term Adjustment (days):	673
USPTO Adjustment (days):	-	Explanation Of Calculations:	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
05-26-2010	Mail Notice of Allowance		
05-18-2010	Notice of Allowance Data Verification Completed		
05-18-2010	Document Verification		
11-13-2006	Information Disclosure Statement considered		
01-30-2002	Information Disclosure Statement considered		
12-06-2006	Information Disclosure Statement considered		
04-06-2010	Interference dispatch to TC		
06-15-2009	Correspondence Address Change		
04-20-2009	Mail Interference Decision - Favorable	443	
04-17-2009	Interference Decision on Priority - Favorable		
07-09-2008	Correspondence Address Change		
01-30-2008	Declaration of Interference		
10-09-2007	Case Docketed to Examiner in GAU		
07-08-2007	Date Forwarded to Examiner		
07-08-2007	to Close the A/R Record and Reset the Status for Expired Suspensions.		

05-21-2007	Miscellaneous Incoming Letter	
04-02-2007	Mail Letter of Suspension	
04-02-2007	Letter of Suspension - Examiner Initiated	
04-02-2007	Interference Initial Memo Disposal	
11-13-2006	Reference capture on IDS	
11-13-2006	Information Disclosure Statement (IDS) Filed	
11-13-2006	Information Disclosure Statement (IDS) Filed	
12-08-2006	Information Disclosure Statement (IDS) Filed	
01-30-2002	Information Disclosure Statement (IDS) Filed	
12-06-2006	Reference capture on IDS	
12-06-2006	Information Disclosure Statement (IDS) Filed	
12-06-2006	Information Disclosure Statement (IDS) Filed	
08-25-2006	Correspondence Address Change	
08-25-2006	Change in Power of Attorney (May Include Associate POA)	
08-14-2006	Mail Examiner Interview Summary (PTOL - 413)	
08-14-2006	Mail Examiner Interview Summary (PTOL - 413)	
07-26-2006	Examiner Interview Summary Record (PTOL - 413)	
07-26-2006	Examiner Interview Summary Record (PTOL - 413)	
01-30-2006	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	
01-30-2006	Request for Extension of Time - Granted	
12-19-2005	Examiner Interview Summary Record (PTOL - 413)	
09-21-2005	Mail Non-Final Rejection	
09-19-2005	Non-Final Rejection	
09-14-2005	Miscellaneous Incoming Letter	
09-23-2005	Date Forwarded to Examiner	
09-14-2005	Supplemental Response	
09-01-2005	Change in Power of Attorney (May Include Associate POA)	
08-30-2005	Examiner Interview Summary Record (PTOL - 413)	
07-08-2005	Date Forwarded to Examiner	
06-29-2005	Response after Non-Final Action	
06-29-2005	Request for Extension of Time - Granted	
06-23-2005	Examiner Interview Summary Record (PTOL - 413)	
03-22-2005	Mail Non-Final Rejection	
03-20-2005	Non-Final Rejection	
03-16-2005	Date Forwarded to Examiner	

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03-07-2005	Response to Election / Restriction Filed	90
03-07-2005	Request for Extension of Time - Granted	✦
09-21-2004	Correspondence Address Change	✦
09-21-2004	Change in Power of Attorney (May Include Associate POA)	✦
09-07-2004	Mail Restriction Requirement	527
09-07-2004	Requirement for Restriction / Election	✦
03-31-2004	IPW TSS Processing by Tech Center Complete	✦
03-30-2004	Case Docketed to Examiner in GAU	✦
05-07-2003	Information Disclosure Statement (IDS) Filed	✦
05-07-2003	Information Disclosure Statement (IDS) Filed	✦
10-21-2003	Preliminary Amendment	✦
10-21-2003	Preliminary Amendment	✦
10-30-2002	Transfer Inquiry to GAU	✦
10-07-2002	Application Dispatched from OIPE	✦
10-04-2002	Application Is Now Complete	✦
09-19-2002	Payment of additional filing fee/Preexam	123
09-19-2002	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applicant	✦
02-19-2002	Notice Mailed--Application Incomplete--Filing Date Assigned	✦
02-07-2002	IPW Scan & PACR Auto Security Review	
01-30-2002	Initial Exam Team nn	

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